

### REMARKS

#### Claim rejections under 35 USC 101

Claim 35 has been rejected under 35 USC 101 as being directed to non-statutory subject matter. In particular, the Examiner has stated that claim 35 is directed to a computer program per se, and thus is non-statutory subject matter. Applicant has amended claim 35, and submits that claim 35 at least as has been amended satisfies 35 USC 101.

For instance, the Examiner notes that computer programs *not* claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. By comparison, and in contradistinction, claim 35 is directed to a computer program that *is* claimed as embodied in a computer-readable medium, and thus is capable of causing functional change in the computer, such that claim 35 is statutory. For example, the computer-readable medium of claim 35 stores a computer program that performs a method which transfers firmware to a mass storage device, such that there is functional change in relation to the mass storage device.

Likewise, the Examiner notes that a claimed computer readable medium that is encoded with a computer program is statutory. Likewise, claim 35 is directed to a claimed computer readable medium that is encoded with a computer program, insofar as the computer program is stored on the medium. Therefore, claim 35 is statutory.

Applicant is potentially amenable to other amendments being made to claim 35 to render it statutory to the satisfaction of the Examiner. In this respect, if the Examiner believes that claim 35 is still not statutory as has been amended, he is very much encouraged to contact Applicant's representative, Michael Dryja, at the phone number listed below, so that this issue can be resolved quickly over the phone. Inasmuch as this rejection of this one claim is the only pending rejection

in this patent application, such a phone conversation can allow this patent application to advance to allowance.

Allowed claims

Claims 1-34 have been allowed.

Conclusion

Applicants have made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Mike Dryja, Applicants' Attorney, at 425-427-5094, so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,



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Date

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